IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1048 of 2002
WITH
CRIMINAL MISC. APPLICATION No 6970 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAZAK @ LALO RAJUBHAI MANSURI
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 1048 of 2002
MR MM TIRMIZI for Appellant No.
MS HARSHA DEVANI, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 31/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. In pursuance to the direction issued by this Court vide order dated 26/08/2004 Mr. P.S. Patel, the Deputy Registrar from the District & Sessions Court, Gandhinagar has remained present and has explained why the earlier order dated 16/8/2004 with regard to direction for sending the R & P to this Court could not be complied with. He has also expressed his regret for the inconvenience caused to this Court. We accept the oral explanation.

2. So far as the merits of the case is concerned, we pass the following order.

Admit.

With the consent of the learned advocates for the parties, the appeal is taken up for final hearing today itself. Pursuant to our order dated 16th August, 2004, the R & P of Sessions Case No. 26 of 2001 is also kept present.

3. Having heard Mr. M.M. Tirmizi, learned advocate for the appellant and Miss Harsha Devani, Ld. APP appearing for the State and having gone through the record of the appeal as well as the trial Court, it appears that the present appellant alongwith three original accused was prosecuted for alleged commission of offences made punishable under Sections 363, 366 and 376 read with section 114 of the Indian Penal Code [hereinafter referred to as 'IPC']. It was alleged that the daughter of the original complainant Ramaji Dhiraji Thakor, namely Kanchan, who at the relevant time was studying in 7th standard, came in contact with the appellant and their acquaintance gradually developed into a love affair. It is alleged that the girl was below the age of 15 years. However, the appellant took her away from the lawful custody of her parents and kidnapped her with a view to marry her. After kidnapping her, she was taken to Lucknow where they stayed for a period of over five months. It is further alleged by the prosecution that during this period the appellant often had sexual intercourse with the girl. It further appears that on 20th September, 2000 they vacated the hired premises at Lucknow and ultimately reached Gandhinagar where they were staying in a guest house. The police on receiving the information, had already commenced investigation in the matter and they eventually apprehended the appellant and the girl from the guest house on 2nd October, 2000.

The appellant was arrested. After compliance with the usual formalities with regard to medical examination of the boy and the girl, etc. the Ld. Magistrate sent him to the judicial custody. The co-accused of the case were also arraigned in the prosecution as accused for rendering help to the appellant in one way or the other.

3.1. At the end of the investigation, charge-sheet was submitted against the appellant and other original accused in the Court of the concerned Ld. Magistrate, who in turn committed the case to the Court of Sessions since offence under Section 376 of the IPC is exclusively triable by the Court of Sessions.

3.2. At the trial, after considering the entire evidence on record, the learned Judge came to the conclusion that the prosecution was able to establish guilt of the appellant beyond reasonable doubt and, therefore, he was convicted for offence punishable under Sections 363, 366 and 376 of the IPC and he was sentenced to suffer RI for five years on each i.e. for offences under Sections 363 and 366 and RI for 10 years for offence under Section 376 of the IPC. His co-accused i.e. original accused no. 3 - Ashokkumar Jawaharlal Kanojiya has been convicted for offences under Sections 363 and 366 with the aid of section 114 of the IPC and he has been sentenced to suffer RI for five years on each count together with fine of Rs.500/- on each count. The substantive sentences are ordered to run concurrently. The judgment is dated 17/10/2002. It is this judgment which is under challenge before this Court.

4. Mr. Tirmizi has restricted his submissions to the question of quantum of sentence alone. According to him, the boy is young and unmarried. He has not forcibly abducted the girl. He has further submitted that considering the fact that they had developed love for each other as they were staying in the neighbourhood, this incident has taken place. He has further submitted that this is merely a technical offence for which sentence of 10 years is very harsh and out of proportionate.

4.1. As against that, Miss Harsha Devani, Ld. APP appearing for the State has submitted that the appellant has tried to take disadvantage of the immature age of the victim as she was below 16 years of age at the time when the incident took place. According to her, the sentence imposed by the trial Court is just and proper and no interference is required.

5. Having considered the evidence on record from the angle of quantum of sentence, it clearly appears that the sentence of 10 years' RI imposed upon the present appellant for offence under Section 376 of the IPC is not just and proper and it is very harsh. The facts reveal that both, the appellant as well as the girl, were residing in the neighbourhood of each other. As a result of that, they had developed liking for each other, which ultimately culminated in their eloping to Lucknow. It further appears that the boy is also very young and unmarried. He has not been able to appreciate the full implications of the act of taking away the girl with him to Lucknow and to live with her for more than 5 months and to cohabit with her. There is, therefore, no element of any cheating or enticing the girl away with the only purpose of satisfying the carnal lust. It is unfortunate that the girl and boy belonged to different communities and she happened to be below 16 years of age at the time when the incident took place. In view of that, the offence appears to be not so serious so as to warrant imposition of RI of 10 years. This is coupled with the fact that the girl is now already married to someone else by her parents and she is living happily as reported to us by Mr. Tirmizi. In view of that, in our opinion imposition of RI for five years on the count of offence under Section 376 of the IPC would meet the ends of justice. Similarly the sentence of RI for five years imposed on each count for the offences under Sections 363 and 366 of the IPC is reduced to one year each. The order of fine is maintained. All the sentences are ordered to run concurrently. We have been informed that during trial the appellant was not released on bail. In that view of the matter, he would get the benefit of set-off and he will have to undergo the imprisonment for the balance period.

Muddamal articles to be disposed of as per the direction of the trial Court given in the judgment.

In view of above, no order is required to be passed on Misc. Criminal Application No. 6970/2004. It is disposed of accordingly.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.